

### **REMARKS**

Applicants have canceled claims 1-25 and 57-58 without prejudice. Claims 26-33 have been amended. Claims 63-68 have been added. Support for the amendments and new claims can be found throughout the specification. For example, support for the claim amendments can be found on, e.g., page 31, lines 1-2 and 24-28; page 32, lines 6-11; Example 10 on pages 102-104. Support for the new claims can be found on, e.g., page 32, lines 10-13; Example 10 on pages 102-104. No new matter has been introduced.

Applicants note with appreciation that the Examiner has renumbered claims 25-62 beginning with the second original claim "23."

Applicants respectfully request reconsideration in view of the following remarks. Issues raised by the Examiner will be addressed below in the order they appear in the prior Office Action.

#### **Election/Restriction**

The Office Action has acknowledged Applicants' election, with traverse, of Group III (claims 26-34) in the Response filed on January 9, 2006.

#### **Information Disclosure Statements**

Applicants note that the Examiner has considered and initialed the Information Disclosure Statement filed on December 6, 2004.

#### **Objection to the Specification**

First, the Examiner requires Applicants to delete the embedded hyperlinks in the specification. Although Applicants submit that reference to a website is ordinarily proper as long as the hyperlink is not active in the patent document, Applicants have deleted reference to the hyperlinks to overcome this rejection.

Second, the Examiner objects to the specification for improper disclosure of polynucleotide sequences. In response, Applicants have amended the specification to include sequence identifiers (e.g., SEQ ID NO) for the sequences described in the application.

### Claim Objections

The Examiner objects to claims 26-34 for being drawn to an unelected invention. In response, Applicants have amended claims 26, 28, and 29 to remove the recitation of Ephrin B2, rendering the objection moot.

### Claim Rejections under 35 U.S.C. § 101

The Examiner alleges that claims 26-34 are directed to non-statutory subject matter. Applicants have amended independent claim 26 to recite “an isolated” as suggested by the Examiner, thereby obviating the rejection. Reconsideration and withdrawal of the rejection are respectfully requested.

### Claim Rejections under 35 U.S.C. § 102(b)

Claims 26-34 are rejected under 35 U.S.C. § 102(b) as being allegedly anticipated by Stephenson et al. (BMC Molecular Biology, 12/21/2001, 2(15):1-9) or Inada et al. (Blood, 1997, 89(8):2757-2765) as further evidenced by Santa Cruz Biotechnology Inc datasheet for EphB4 (H-200). Applicants traverse these rejections to the extent it is maintained over the claims as amended.

Solely to expedite prosecution, Applicants have amended independent claim 26 to recite an isolated antibody which binds to an extracellular domain of an EphB4 protein and promotes apoptosis in a tumor cell, wherein the antibody is selected from bispecific, single-chain, chimeric, human, syngeneic, and humanized antibodies.

Support for the amendments can be found throughout the specification. For example, support for the recitation “bispecific, single-chain, chimeric, human, syngeneic, and humanized antibodies” can be found, e.g., on page 31, lines 1-2 and 24-28; page 32, lines 6-11. Support for the recitation “promotes apoptosis in a tumor cell” can be found, e.g., in Example 10 (pages 102-104). Applicants further submit that the amendments are made merely to expedite allowance of claims directed to

most commercially relevant embodiments of the present invention. Applicants reserve the right to pursue claims of similar or differing scope in the future.

The standard for anticipating a claim is clearly outlined in MPEP 2131, and this standard is further supported by the Courts. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1978).

Applicants contend that the cited references fail to satisfy this criteria for anticipating the present invention. Stephenson et al. disclose a polyclonal EphB4 antibody (H-200) obtained from Santa Cruz. Although the EphB4 antibody of Stephenson et al. binds to an extracellular domain of an EphB4 protein, Stephenson et al. fail to teach an isolated EphB4 antibody which promotes apoptosis in a tumor cell, or an EphB4 antibody which is selected from bispecific, single-chain, chimeric, human, syngeneic, and humanized antibodies, as recited in the present claims.

Similarly, Inada et al. disclose monoclonal and polyclonal EphB4 antibodies which bind to an extracellular domain of an EphB4 protein. However, Inada et al. fail to teach an isolated EphB4 antibody which promotes apoptosis in a tumor cell, or an EphB4 antibody which is selected from bispecific, single-chain, chimeric, human, syngeneic, and humanized antibodies, as recited in the present claims.

In view of the above arguments and amendments, the cited references fail to meet the limitations of the present claims and thus fail to anticipate the claimed subject matter. For the same reasons, the claims that depend from claim 26 are not anticipated by Stephenson et al. or Inada et al. Reconsideration and withdrawal of the novelty rejection are respectfully requested.

In addition, Applicants respectfully submit that the cited references, singly or in combination, do not provide any teaching or suggestion that one could generate modified forms of EphB4

antibodies which promote apoptosis in a tumor cell because EphB4 was not even known to have a role in apoptosis at the time this application was filed.

Double patenting

Claims 26-34 are rejected under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over claims 1-23 of copending Application No. 10/949,720.

Applicants respectfully request the Examiner hold this rejection in abeyance until allowable subject matter is found; at which point, Applicants will submit a terminal disclaimer if deemed necessary.

CONCLUSION

Although Applicants believe no fees are due with this response in addition to the fees provided for on the Fee Transmittal sheet. However, if a fee is due, the Commissioner is hereby authorized to charge any deficiency in the fees filed, asserted to be filed or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account No. 18-1945, under Order No. VASG-P01-002. Please direct any questions arising from this submission to the undersigned at (617) 951-7000.

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Respectfully submitted,

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